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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 646-49

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

vs.

UNITED STATES OF AMERICA, ET AL.,
Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, plaintiff-appellant, Railway Labor Executives' Association, submits herewith its statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the final judgment and decree of the District Court entered in this cause on June 17, 1949. The petition for appeal was filed and the order allowing the appeal was entered on August 16, 1949.

Statutory Provisions Sustaining Jurisdiction

The jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment and decree complained of is conferred by the Judicial Code as revised by the Act approved June 25, 1948, effective Septem-

ber 1, 1948, entitled Title 28, U. S. Code, Sections 1253 and 2101(b), consolidating and continuing the substance of prior provisions of law relating to direct appeals from decisions of three-judge courts in suits to set aside in whole or in part orders of the Interstate Commerce Commission. The following decisions, among others, in which appeals were taken pursuant to such prior provisions thus codified, sustain the jurisdiction of the Supreme Court of the United States to review the judgment and decree on direct appeal in this case:

United States v. *Lowden*, 308 U. S. 225;

Interstate Commerce Commission v. *Railway Labor Executives' Association*, 315 U. S. 373.

Statute Involved

The statutory provision involved in this case is Section 5(2)(f) of the Interstate Commerce Act (54 Stat. 906; 49 U.S.C., §5(2)(f)), which provides as follows:

> (f) As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection

of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

The Issue

The single question presented for decision is whether Section 5(2)(f) of the Interstate Commerce Act requires the Commission to limit all protection of employees adversely affected to a period of four years from the effective date of its order of approval. More particularly, the question raised is whether the specific requirements of the second sentence of Section 5(2)(f) preclude the Commission from exercising any discretion under the first sentence of the Section with respect to the nature and extent in time of employee protection.

Nature of the Case and Rulings Below

On November 21, 1947, the City of New Orleans, Louisiana, which, through the agency of its Public Belt Railroad Commission, owns and operates a belt line of railroad, together with certain common carriers by railroad (intervening defendants-appellees herein), filed a joint application with the Interstate Commerce Commission for approval of certain proposed transactions. Authority was sought to construct and acquire certain lines of railroad, to jointly own or use lines of railroad, and to abandon certain other lines or operations—all as necessary incidents to the construction of a new railroad passenger terminal at New Orleans and the removal within that city of certain trackage for the pupose of eliminating undesired grade crossings.

The Railway Labor Executives' Association, plaintiff-appellant herein, intervened in the Commission proceeding as a representative of the interests of the employees

of the railroad carriers involved. It did not oppose the project, but it urged that if the requested authorizations were granted, they be made subject as required by section 5(2)(f) of the Interstate Commerce Act,[1] to a fair and equitable arrangement for the protection of railroad employees displaced from their positions or otherwise adversely affected as a result of the transactions.

After hearing Division 4 of the Commission on April 7, 1948, entered its report and order,[2] authorizing the proposed transactions.

From its review of the evidence of record, the Commission found that employees definitely would be adversely affected by applicants' proposals.[3] The Commission did not attempt to fix the exact number of employees who ultimately would be affected, but relied upon estimates by a committee of transportation officers that, based on present day conditions, approximately 1022 employees would be adversely affected by the transactions, and that about 350 would eventually lose their jobs.[4] The Commission also stated that it was admittedly impossible, at the time of its order, to ascertain the identity of the estimated number of employees who would be released from service or otherwise be adversely affected.[5]

Because of its finding that employees definitely would be adversely affected, the Commission concluded that it was required to provide "a fair and equitable arrangement to protect the interests of employees so affected", and further found that "the benefit of such arrangement necessarily must extend to all the railroad employees af-

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[1] 54 Stat. 906, 49 U.S.C. § 5(2)(f).

[2] 267 I.C.C. 763.

[3] 267 I.C.C. 763, 782.

[4] 267 I.C.C. at 777-778.

[5] 267 I.C.C. at 780.

fected by the exercise of the authorizations herein granted."[6]

Accordingly, the transactions proposed were approved subject to certain conditions required by Section 5(2)(f) of the Interstate Commerce Act, *supra*, and purportedly were provided for the protection of all railroad employees who would later be adversely affected as a result of the project.

The specific protective conditions which the Commission imposed in this case were not set forth in the Commission's report, but are incorporated therein by reference to a previous Commission decision wherein they are specifically enumerated. Plaintiff-appellant has set forth these conditions in Exhibit B to its Complaint. Briefly, they deal with (1) allowances for displacement to a position of lower compensation; (2) dismissal allowances for loss of job; (3) reimbursements for expenses incurred in moving families and household effects in order to retain employment with the carrier at another point on its lines; and (4) reimbursements for losses incurred in forced sales of homes below fair value incident to acceptance of employment at a new location.

These conditions are limited in time, by their express terms, to remain in effect for a period of four years from the effective date of the Commission's order authorizing the transactions.[7] Said effective date was fixed by the Commission at forty days after April 7, 1948.[8]

By its original order of April 7, 1948, the Commission authorized the project upon condition, among others, that

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[6] *Id.*, at 782. This later finding was made in answer to a contention by applicants that certain employees, approximately 109 grade crossing watchmen and 9 bridge tenders, were not entitled to receive protection. *Id.* at p. 781.

[7] Exhibit B of the Complaint, p. 1.

[8] 267 I.C.C. 763, 783.

said construction be commenced on or before December 31, 1948, and completed on or before December 31, 1953. By a subsequent order the Commission extended the period of time for commencement and completion of the project to December 31, 1949 and December 31, 1954, respectively, upon a finding that applicants would be unable to commence or complete the authorized construction of the lines of railroad within the time prescribed by the original order.[9]

The Commission's order of April 7, 1948, directs that none of the lines or operations permitted to be abandoned may be abandoned until after operation is substituted over the new lines authorized to be constructed.[10] It is conceded that the overwhelming majority of the employees who will be adversely affected by the project will not be so affected until after the now existing trackage and the five separate terminal stations are abandoned.[11] But the protective conditions by their terms expire in May 1952.

In the light of the foregoing undisputed facts, it was contended by the plaintiff-appellant that since, by applicants' own estimates, "the physical consummation of the project would require four or five years,"[12] imposition of conditions limited in point of time to four years from the effective date of the Commission's order (i.e. May 17, 1952) would effectively nullify such conditions because the period of protection would expire before employees were adversely affected.[13]

Consequently, it was argued that the purported protection would, in fact, amount to no protection under the cir-

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[9] Exhibit D to the Complaint.

[10] Exhibit A to the Complaint, p. 19.

[11] 267 I.C.C. 763 and 778.

[12] The Commission expressly so states in its report, 267 I.C.C. 763 at 778. Now, however, the period for physical consummation is extended an additional year as a result of the authorized extension of time for commencement and completion of the project.

[13] 267 I.C.C. 763, 779.

cumstances of this case, and that such a result would be wholly contrary to both the terms and spirit of Section 5(2)(f) of the Interstate Commerce Act. Accordingly, it was submitted that the period of protection should either date from the time when employees are adversely affected, or the period commencing with the effective date of the Commission's order should be extended, in order to provide some protection in accordance with the basic purpose of the statutory provision when read as a whole.

The Commission, however, concluded that as a matter of law it had no authority to prescribe a period other than one of four years from the effective date of its order.[14]

A petition to the full Commission for reconsideration and modification of this conclusion by Division 4, on the ground that it represented an erroneous construction of the statute provisions of Section 5(2)(f), was denied.[15]

Following denial of its petition for reconsideration to the full Commission, plaintiff-appellant filed a complaint in the United States District Court for the District of Columbia, seeking to set aside that part of the Commission's order asserted to result from an erroneous construction of Section 5(2)(f) of the Interstate Commerce Act. After answer by the defendant and intervening defendants, all parties moved for summary judgment, there being no genuine issue of material facts in dispute. For this reason, the evidence introduced before the Commission was not proffered in evidence before the District Court. The single question presented for determination was whether Section 5(2)(f) of the Interstate Commerce Act requires the Commission to limit all protection of employees adversely affected to a period of four years from the effective date of its order of approval.

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[14] 267 I.C.C. at 782.

[15] Exhibit E of the Complaint.

The case was heard on May 6, 1949, before a three-judge court convened pursuant to the provisions of the revised Judicial Code effective September 1, 1948, Title 28 United States Code, sections 1336, 2325 and 2284.

On May 27, 1949, the District Court rendered its opinion upholding the Commission's construction of the statute, and, having determined that there was no genuine issue of a material fact, granted defendants' motions for summary judgment and dismissed the complaint. The District Court's judgment and decree was entered on June 17, 1949. Copies of the opinion of the District Court and its decree are appended to this Statement.

The Question Presented Is Substantial

The question presented by this appeal is substantial. Although jurisdiction herein is conferred as a matter of right by the aforecited statutory provisions of the revised Judicial Code, it is significant to note that several of the important reasons which guide the Supreme Court in exercising its discretion to grant petitions for *certiorari* are present in this case and attest to the substantial nature of the question presented.

First, the three-judge District Court has decided an important question involving the construction of a federal statute enacted in the interests of the morale and welfare of all railroad employees. The question has not been, but should be, settled by the Supreme Court.

Second, the question has been determined by the District Court in a way probably not in accord with applicable decisions of the Supreme Court and definitely in conflict with basic Congressional intent in providing the legislation embodied in Section 5(2)(f) of the Interstate Commerce Act.

Each of these reasons for regarding the question as substantial will be briefly discussed hereunder.

The issue presented on this appeal was stated by the lower court in these words:

> "The issue here involved therefore concerns merely an interpretation of the provisions of Section 5(2)(f) of the Transportation Act. It does not involve the review of any discretion exercised by the Commission, as that body has held that 'the fair and equitable arrangement contemplated by Section 5(2)(f) is measured by the specification therein of a protective period of four years from the effective date of our order approving the transaction within the scope of Section 5(2)(f).'"[16]

We have no quarrel with this statement, but on the contrary wish to emphasize its correctness. This action questions the *power* of the Commission to enter an order such as was sought by plaintiff-appellant in this case, and not the propriety of such an order in relation to the facts of the case.

In the light of the issue thus limited, the decision of the Commission affirmed by the lower court is one of far reaching significance. Its import is that *under no conceivable state of evidence in any case* involving a coordination or consolidation transaction by carriers pursuant to Section 5(2) of the Interstate Commerce Act can the Commission grant any protection to employees except that specifically enumerated in the second sentence of Section 5(2)(f) of the Interstate Commerce Act. The protection there afforded is limited in point of time to four years *from the effective date of the Commission's order* approving the coordination transactions.

The fundamental error which plaintiff-appellant asserts is created by such a construction of the statute is that it ignores

[16] Appendix A to this Statement, p. 19.

the basic purpose of Congress in passing the legislation as expressed in the first sentence of Section 5(2)(f) which provides that as a condition to its approval of transactions proposed by railroads under Section 5(2) the Commission "shall require a fair and equitable arrangement to protect the interests of the railroad employees affected." In effect, the construction which the Commission has made and the District Court has approved in the instant case nullifies the first sentence of Section 5(2)(f) completely and proceeds as though the second sentence was the sole provision of the section.

Not only does such a construction do violence to well established principles of statutory construction, but it creates an inequitable situation in the present case which the language of the statute does not require and which the legislative history of Section 5(2)(f) discloses was certainly not intended by Congress. That inequitable situation is briefly this. It is conceded on the face of the Commission's findings in its Report in this case that the great majority of the employees who will be adversely affected by the transactions authorized will not be so affected until after the period during which the conditions of protection are applicable has expired. This is so because the conditions by their express terms expire in May, 1952, and the abandonments which give rise to the bulk of employee displacements may not be instituted by the carriers until the new construction authorized is completed, which completion the Commission has found cannot be accomplished until sometime in 1954. Neither the Commission nor the District Court have denied the existence of this fundamental inequity. As a matter of fact, the Commission does not even atttempt to answer it, but simply asserts that it is without statutory authority to do anything about the situation. Even the railroad intervenors in their briefs before both the Commission and the District Court conceded that this was so.

Accordingly, the net effect of the Commission's construction of Section 5(2)(f) is that Congress intended to guarantee the benefits of protective conditions to all railroad employees who would be adversely affected by projects which could be physically consummated during the period of four years from the Commission's order authorizing such projects, but that no protection whatever was to be accorded employees who would be adversely affected by projects which could not be physically consummated within such a period. Manifestly, Congress intended no such inequitable or incongruous result. This inequity wholly disappears if the first sentence of Section 5(2)(f) is given the meaning its language purports to grant and if the second sentence of the section is interpreted as establishing a minimum standard only. Under this interpretation, a protective floor is supplied above which the Commission is free to act in requiring a further arrangement for employee protection, of such sort and for such a period as the Commission might consider fair and equitable, in those cases where the facts and circumstances are such that the minimum requirements of the second sentence are insufficient to satisfy the requirement of the first sentence. We see no other way in which both provisions of Section 5(2)(f) can be reasonably construed.

Moreover, this is the only construction consistent with the legislative history of Section 5(2)(f). When the Supreme Court decided *United States* v. *Lowden*, 308 U. S. 225, and *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U. S. 373, it examined the legislative history of Section 5(2)(f) and concluded that the purpose of that legislation was simply to make mandatory the protection for workers that had previously been discretionary.[17] This being so, the Commission's interpre-

[17] 308 U. S. 225 at 239; 315 U. S. 373 at 379.

tation is clearly erroneous that the requirements of the second sentence of Section 5(2)(f) preclude its authority to exercise discretion theretofore available to it prior to the passage of the mandatory provisions of Section 5(2)(f).

There is no question that prior to the mandatory provisions of Section 5(2)(f) the Commission had discretion to provide the protection of the Washington Agreement if it so desired, wherein the period of protection commences with the *consummation of the project and the time when the employee is adversely affected* rather than from the effective date of the Commission's order.[18] Furthermore, there is no doubt that the Commission possesses authority to provide such protection, as it afforded in the *Lowden* case, under the abandonment provision of the Interstate Commerce Act [Section 1 (18)-(20)],[19] *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U. S. 373. The bulk of the adverse effects for which protection is sought in this case occurs as a result of authority granted by the Commission under Section 1 (18-20) of this Act, but because of the fact that coordination transactions are also involved the Commission treated the issue of employee protection as subject only to its authority under Section 5(2)(f). Consequently, if the transactions of this case had arisen wholly under the abandonment provisions of the Interstate Commerce Act (where protection to employees is not mandatory) instead of partly under the provisions of Section 5(2)(f), there would be no suggestion that statutory language bars the Commission from requiring protection similar to that granted in the *Lowden* case, which protection would be fair and equitable under the circumstances of this case.

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[18] See *Lowden* v. *United States*, 29 F. Supp. 9, reversed on appeal, 308 U. S. 225, wherein the Commission applied such protection in a consolidation proceeding under Section 5(4) (b) of the Interstate Commerce Act.

[19] 49 U.S.C., § 1(18)-(20).

Accordingly, the particular paradox of the Commission's decision in this case is that its interpretation of the statute necessarily means that what was undeniably available in terms of protection when the Act contained no requirements for protective conditions is now denied by a statutory provision which makes the imposition of an equitable arrangement for the protection of employees mandatory. The ironic character of such a circumstance alone demands a careful appraisal of what Congress really intended when it wrote the several provisions of Section 5(2)(f). We submit that the above-cited decisions of the Supreme Court holding that the legislative history of Section 5(2)(f) reveals merely that Congress intended to make mandatory what was previously discretionary, obviously imply that Congress certainly did not intend to take away employee protection already present. The Commission's construction of Section 5(2)(f) in this case requires us to impute to Congress a policy of adequate protection if this case had arisen wholly under the abandonment section of the Act but no such protection because of the mandatory provisions contained in the second sentence of Section 5(2)(f).[20] If Congress had intended such a distinction, it would have made its intention plain by leaving out the provision contained in the first sentence of Section 5(2) (f). It did not do so.

On the contrary, Congress was careful, as the Supreme Court has held, to continue under the mandatory language of Section 5(2)(f) discretion theretofore available to the Commission *in addition to* requiring certain minimum protection both of kind and extent in time during which it must be provided. This is confirmed by reference to several statements made by proponents of the legislation in both

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[20] *Cf. Interstate Commerce Commisison* v. *Railway Labor Executives' Association*, 315 U. S. 373 at 379-380.

House and Senate during its passage. One such statement which stands out and warrants citation at this time was made by Representative Lea, Chairman of the House Conferees of the Committee which reported the measure which subsequently became Section 5(2)(f) of the Interstate Commerce Act. In explaining the several provisions of Section 5(2)(f) to the House before the legislation was voted upon and adopted, Representative Lea said:

> "The next amendment concerning which the House instructed us was known as the Harrington Amendment. There were certain things involved in the instructions as to this amendment to which I want to call your attention. The first was that the Interstate Commerce Commission should make fair and equitable provisions for employees affected adversely by reason of consolidations or unifications. We had a provision in the original bill that came to the House to that effect and the amendment that we have agreed upon embodies that same provision.
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> "The substitute that we bring in here provides *two additional things.* First, there is a limitation on the operation *of the Harrington amendment* for 4 years from the effective date of the order of the Commission approving the consolidation. In other words, the employees have the protection against unemployment for 4 years, but the Commission is not *required* to give them benefits for any longer period. . . .
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> • • • • • • •
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> "We believe that is a very fair and a very liberal provision for labor. We believe that railway labor substantially agrees in that viewpoint. *We take nothing from labor by this agreement.* We simply write *specific provisions that shall be in the order* of approval of the Commission, *but otherwise we do not tie its hands.*" (Emphasis supplied.) [21]

[21] 86 Cong. Rec., Part 9, 77th Cong., 3d Sess., p. 10178.

It is perfectly clear from the foregoing explanation of Section 5(2)(f) that Congress never intended the first provision of Section 5(2)(f) to be meaningless and to preclude the Commission from exercising discretion under the section to provide protection beyond the specific requirements of the second sentence (the Harrington Amendment) in a case where the facts and circumstances were such that such minimum requirements would not provide an arrangement for employee protection which was fair and equitable.

For the foregoing reasons, we submit that the construction of the federal statute involved has been determined by the Commission and the District Court in a way not in accord with applicable decisions of the Supreme Court and contrary to the basic intent of Congress in passing the legislation.

In reaching its conclusions on the issue of statutory construction, the District Court relied in part on certain decisions by the Interstate Commerce Commission which were cited by the Government in its brief to that court.[22] These decisions were cited by the District Court in support of the proposition that the Commission's construction of the statute in the present case is in accord with its prior construction of the statute, and that because of this the instant interpretation is entitled to great weight. There are two reasons why the judgment below to this extent is erroneous.

In the first place, only one of the decisions relied upon has any relevance to the issue in this case. That decision, *Chicago, Milwaukee, St. Paul & Pac. Ry. Co. Trustees et al. Construction, etc.*, 257 I. C. C. 292, raised the identical issue here present and was decided by a majority of the Commission adversely to petitioner, Railway Labor Executives'

[22] See Appendix A to this Statement, p. 20, wherein these decisions are cited.

Association, three Commissioners dissenting.[23] It was this decision, and this decision alone, which was relied upon by the Commission in reaching its conclusions in the present case, in which again two Commissoners dissented in the Commission's denial of the Railway Labor Executives' Association's petition for reconsideration. In the other cases cited by the District Court the issue of the proper construction of Section 5(2)(f) was not even raised for the reason that the protection there afforded under the minimum requirements of the second sentence of the section was entirely adequate under the facts and circumstances present in those cases.

In the second place, it was established by the Supreme Court in *Interstate Commerce Commission* v. *Railway Labor Executives' Association*, 315 U. S. 373, 380, that the Commission's construction of a statute under circumstances such as are present in this case is not entitled to great weight.[24]

For the foregoing reasons, we submit that the question involved on this appeal is substantial.

Respectfully submitted,

CLARENCE M. MULHOLLAND,
EDWARD J. HICKEY, JR.,
Attorneys for Plaintiff.

Dated August 16, 1949.

Appendix A—Opinion of the District Court.
Appendix B—Judgment and Decree of the District Court.

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[23] 257 I.C.C. 292 at 294. No appeal was taken from the decision. Unlike the present case, the date for completion of the project ran out in 1944 which still left 2 years of protection under the Commission's order. See 257 I.C.C. 292 at 293.

[24] Unlike the present case where the interpretation of Section 5(2)(f) has been reached by the Commission in only one other case, the Commission's construction rejected in the *Railway Labor Executives'* case had been followed in a considerable number of cases.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 646-49

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Plaintiff*,

v.

UNITED STATES OF AMERICA, et al., *Defendants*

Before Clark, Circuit Judge, and Bailey and Pine, District Judges, Sitting as a Statutory Three-Judge Court

PINE, *J.*:

This is an action to set aside, in part, an order of the Interstate Commerce Commission. The defendants are the United States and the Interstate Commerce Commission. The City of New Orleans and certain railroad companies have been granted leave to intervene as defendants. All parties and intervenors have respectively moved for summary judgment. There is no genuine issue of a material fact.

The order involved herein granted the railroad intervenors authority under the Interstate Commerce Act to rearrange their tracks incident to the construction of a Union Passenger Terminal in the City of New Orleans. Plaintiff seeks to set aside that part of the order making provision for protecting the interests of employees adversely affected by the grant of authority.

The total number of employees affected has been estimated at 1022. The number required to operate the Union Passenger Terminal has been estimated at 680. So far as feasible the personnel will be recruited from employees displaced. The estimates indicate a net displacement of from 300 to 350 employees. The physical consummation of the project will require four or five years.

The part of the order to which exception is taken provides as follows:

> "We are of opinion that a fair and equitable arrangement for protecting the interests of employees adversely

affected by the applicants' proposals here will be provided by conditions similar to conditions (4) to (9), inclusive, imposed by us in Oklahoma Ry. Co. Trustees Abandonment, 257 I. C. C. 177 (197-201) which are similar to those prescribed in Chicago, B. & Q. R. Co., Abandonment, supra, and our approval and authorization herein will be granted subject to those conditions."

The order in Oklahoma Railway Co. Trustees Abandonment, referred to, contains the following language:

"The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of four years from the effective date of our order herein; provided, however, that such protection shall not continue for a longer period following the effective date of our order herein than the period during which such employee was in the employ of the carriers prior to the effective date of our order."

The statute under which the order was made is Section 5(2)(f) of the Transportation Act of 1940,[25] and so far as material, reads as follows:

"As a condition of its approval . . . the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded . . . shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order."

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[25] 49 U.S.C.A. 5(2)(f).

Plaintiff contends that the four-year period specified in the statute fixes the minimum period of employee protection, leaving the Commission with discretion to extend such period, and proposed before the Commission that the protection should continue for at least four years from the time employees shall be adversely affected, it being plaintiff's position that the order involved herein provides no protection whatever to employees who will be adversely affected by authorized transactions which will not be completed until after the protected period prescribed has expired. Defendants contend that the language plainly does not authorize the Commission to prescribe any protective period, other than a "period of four years from the effective date" of the Commission's order of approval, the only qualification being in the case of employees of less than four years employment, where the protective period cannot be longer than the employees' prior employment.

The issue here involved therefore concerns merely an interpretation of the provisions of Section 5(2)(f) of the Transportation Act. It does not involve the review of any discretion exercised by the Commission, as that body has held that "the fair and equitable arrangement contemplated by Section 5(2)(f) is measured by the specification therein of a protective period of four years from the effective date of our order approving the transaction within the scope of Section 5(2)(f)."

In our view the language of the statute in question is clear and unambiguous and the Commission's interpretation is correct. The first sentence thereof provides that the Commission shall require fair and equitable arrangements to protect the interests of employees affected. The second sentence prescribes the standard for such arrangements, namely that they shall be such that the employees will not be placed in a worse position with respect to their employment, and then proceeds to limit the time of such protection, namely four years from the effective date of the approval order. In addition, this interpretation is in accordance with the Commission's prior construction of

the statute,[26] and on that account is entitled to great weight. Finally, the legislative history set forth by counsel for the defendants in their briefs is corroborative of the Commission's interpretation of the statute.

We are therefore of the view that the actions for summary judgments filed by the defendants should be granted and the complaint should be dismissed.

Counsel will submit appropriate order.

(S.) BENNETT CHAMP CLARK,
Circuit Judge.

(S.) JENNINGS BAILEY,
District Judge.

(S.) DAVID A. PINE,
District Judge.

May 27, 1949.

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[26] Texas & Pac. Ry. Co. et al. Operation, etc. (1941), 247 I. C. C. 283, 295, 296.

Chicago, Milwaukee, St. Paul & Pac. Ry. Co. Trustees et al., Construction etc. (1942), 252 I.C.C. 49, 66; 252 I.C.C. 287; 257 I.C.C. 292.

Oklahoma Ry. v. Trustees, Abandonment, etc., 257 I.C.C. 177, 196-202.

Chicago, Burlington & Quincy R.R.Co. (1944), 257 I.C.C. 700.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 646-49

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Plaintiff*,

v.

UNITED STATES OF AMERICA, ET AL., *Defendants*

JUDGMENT, ORDER AND DECREE

This cause came on to be heard on the 6th day of May, 1949, on an action to set aside in part an order of the Interstate Commerce Commission, and all parties and intervenors having moved for summary judgment, there being no genuine issue of a material fact, and the Court having heard the arguments of counsel for all parties, and the Court having considered the matter and being fully advised in the premises, and having concluded, found and determined that the motions for summary judgment filed by the defendants should be granted and the complaint dismissed.

It Is Hereby Ordered, Adjudged and Decreed that the motions for summary judgment filed by the defendants, be and they are hereby granted, and the complaint is hereby dismissed with prejudice at plaintiff's costs.

This 17th day of June, 1949.

(S.) BENNETT CHAMP CLARK,
Circuit Judge;

(S.) JENNINGS BAILEY,
District Judge;

(S.) DAVID A. PINE,
District Judge.

Seen:

(S.) EDWARD J. HICKEY, JR.,
Attorney for Plaintiff;

(S.) DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission;

(S.) W. S. MACGILL,
Attorney for Railroad Intervenors.